

3009.570-3

Senate, and the Committee on Commerce, Science and Transportation of the Senate that—

(i) The entity was selected by DHS as a contractor to develop or construct the system or element concerned through the use of competitive procedures, and

(ii) DHS took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) The entity was selected by a sub-contractor to serve as a lower-tier sub-contractor, through a process over which the entity exercised no control.

(c) CONSTRUCTION—Nothing in this section 3009.570 shall be construed to preclude an entity described in paragraph (a) of this subsection from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

[75 FR 41099, July 15, 2010]

3009.570-3 Procedures.

In making a responsibility determination before awarding a contract for the acquisition of a major system, the contracting officer shall—

(a) Determine whether the prospective contractor meets the definition of “lead system integrator”;

(b) Consider all information regarding the prospective contractor’s direct financial interests in view of the prohibition at (HSAR) 48 CFR 3009.570-2(a); and

(c) Apply the following procedures:

(1) After assessing the offeror’s direct financial interests in the development or construction of any individual system or element of any system of systems, if the offeror—

(i) Has no direct financial interest in such systems, the contracting officer shall document the contract file to that effect and may then further consider the offeror for award of the contract;

(ii) Has a direct financial interest in such systems, but the exception in (HSAR) 3009.570-2(b)(2) applies, the contracting officer shall document the contract file to that effect and may then further consider the offeror for award of the contract;

(iii) Has a direct financial interest in such systems and the exception in

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(HSAR) 3009.570-2(b)(2) does not apply, but the conditions in (HSAR) 3009.570-2(b)(1)(i) and (ii) do apply, the contracting officer—

(A) Shall document the contract file to that effect;

(B) May, in coordination with program officials, request an exception for the offeror from the Secretary of Homeland Security, in accordance with Homeland Security Acquisition Manual section 3009.570; and

(C) Shall not award to the offeror unless the Secretary of Homeland Security grants the exception and provides the required certification to Congress; or

(iv) Has a direct financial interest in such systems and the exceptions in (HSAR) 3009.570-2(b)(1) and (2) do not apply, the contracting officer shall not award to the offeror.

[75 FR 41099, July 15, 2010]

3009.570-4 Solicitation provision and contract clause.

(a) Use the provision at (HSAR) 48 CFR 3052.209-74, Limitations on Contractors Acting as Lead System Integrators, in solicitations for the acquisition of a major system when the acquisition strategy envisions the use of a lead system integrator.

(b) Use the clause at (HSAR) 48 CFR 3052.209-75, Prohibited Financial Interests for Lead System Integrators—

(1) In solicitations that include the provision at (HSAR) 48 CFR 3052.209-74; and

(2) In contracts when the contractor will fill the role of a lead system integrator for the acquisition of a major system.

[75 FR 41099, July 15, 2010]

PART 3010—MARKET RESEARCH [RESERVED]

PART 3011—DESCRIBING AGENCY NEEDS

Subpart 3011.1—Selecting and Developing Requirements Documents

Sec.
3011.103 Market acceptance.

Homeland Security Department

3012.301

Subpart 3011.2—Using and Maintaining Requirements

3011.204–70 Solicitation provisions and contract clauses.

Subpart 3011.5—Liquidated Damages

3011.501 Policy.

Subpart 3011.6—Priorities and Allocations

3011.602 General.

AUTHORITY: 41 U.S.C. 418b (a) and (b).

SOURCE: 68 FR 67871, Dec. 4, 2003, unless otherwise noted.

Subpart 3011.1—Selecting and Developing Requirements Documents

3011.103 Market acceptance.

(a) Contracting officers may act on behalf of the head of the agency in this subpart only. Contracting officers may, under appropriate circumstances, require offerors to make the required demonstrations.

Subpart 3011.2—Using and Maintaining Requirements Documents

3011.204–70 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.211–70, Index for Specifications, when an index or table of contents may be furnished with the specification.

Subpart 3011.5—Liquidated Damages

3011.501 Policy.

(d) The HCA may reduce or waive the amount of liquidated damages assessed under a contract, if the Commissioner, Financial Management Service, or designee approves.

Subpart 3011.6—Priorities and Allocations

3011.602 General.

(c) The following DHS Components may assign priority ratings on contracts and orders placed with contractors to acquire products, materials, and services under the Defense Priorities and Allocations System (DPAS) regulations (15 CFR part 700):

(1) The U.S. Coast Guard in support of certified national defense related programs; and

(2) The Federal Emergency Management Agency in support of emergency preparedness activities.

[68 FR 67871, Dec. 4, 2003, as amended at 71 FR 48801, Aug. 22, 2006]

PART 3012—ACQUISITION OF COMMERCIAL ITEMS

Subpart 3012.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.

3012.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

AUTHORITY: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

SOURCE: 77 FR 50635, Aug. 22, 2012, unless otherwise noted.

3012.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) Solicitation provisions and contract clauses. Insert (HSAR) 48 CFR 3052.212–70, Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items, in any solicitation or contract for commercial items when any of the provisions or clauses listed therein applies and where incorporation by reference of each selected provision or clause is, to the maximum extent practicable, consistent with customary commercial practice. If necessary, tailor this clause.